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DECISION



*A. H. ...
P. ...*

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-190296

DATE: May 25, 1978

MATTER OF: Airport Management Systems, Inc.

DIGEST:

1. Where record indicates that evaluation of proposal was in accordance with established criteria and was based on reasoned judgment of evaluators, protest based on offeror's disagreement with evaluation is denied because determination of relative merits of proposal is responsibility of procuring agency and will not be disturbed unless shown to be arbitrary or contrary to statutes or regulations.
2. Protest coming 6 months after best and final offers that questions in initial proposal were never answered is untimely.
3. Protester alleging that had it been advised that limousines would be dispatched by taxi dispatchers its guarantee would have been substantially different cannot prevail when there was no indication in RFP that contractor would not be able to also dispatch limousines working out of airport.

Airport Management Systems, Inc. (Airport), has protested the award of contract No. DOT-FA-NA-5247 to All State Messenger and Delivery Service, Inc. (All State), under request for proposals (RFP) No. DOT-FA-NA-77-1 issued by the Federal Aviation Administration (FAA), Department of Transportation.

The RFP was for a 5-year period and was concerned with the management and operation of a complete open taxicab transportation system at Washington National Airport (National). Amendment No. 2 advised prospective offerors that the Government had entered into negotiations with a company for the conduct of a scheduled limousine service between the airport and certain points in Virginia and that they should make an assessment of the possible impact that the limousine service would have on taxicab operations at the airport.

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Taxicabs at the airport are required to pay a fee of \$0.50 every time they pick up passengers. The fee is collected by the operator of the open taxicab transportation system. For the right to manage and operate the system, the RFP requested offers to the Government of a percentage of the gross receipts. The percentages offered for each year of operation were applied against the gross receipts the Government estimated the operator would collect each year over a 5-year period. On the basis of these projections, the four proposals received were as follows:

<u>Proposer</u>	<u>Projected payment to Government for 5-year period</u>
All State	\$1,271,670
Airport	1,133,400
Ground Services, Inc.	999,630
Airway Equipment Rental Co., Inc. (Airway)	931,320

Subsequent to the initial review of the proposals, Airway's proposal was determined, for various reasons not germane to the present protest, to be outside the competitive range and was eliminated from further consideration for award. FAA conducted discussions and negotiations with the remaining firms. All State was the only offeror that increased the percentage of revenue offered to the Government. The projected revenue to the Government on the basis of the increased percentage was \$1,347,540.

The best and final offers were evaluated in accordance with the evaluation criteria stated in the RFP as follows:

"EVALUATION CRITERIA

- "1. Experience of the proponent in managing ground transportation activities, and quality of past performance, particularly satisfactory experience in managing a major taxicab dispatching system.

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- "2. Revenue to the Government, calculated on the basis of a 5-year contract.
- "3. Plan of operation including adequacy of staffing.
- "4. Qualifications and authority of on-site management.
- "5. Operational and financial controls.
- "6. Record of integrity and business ethics.
- "7. Financial ability to perform.
- "8. Minority representation in management, supervisory and non-supervisory positions."

The evaluation committee established point values for each of the eight evaluation factors set forth in the RFP. As indicated above, revenue to the Government and integrity and business ethics were evaluated along with other factors to arrive at a composite score for the offerors. The evaluation scores were:

All State	97.8
Airport	95.2
Ground	86.8

On the basis of these scores, All State was selected for award.

Thereafter, as a result of evidence presented by Airport concerning All State's integrity and business ethics, that factor was reevaluated. All State's overall score as a result of the reevaluation was 97.2. Therefore, award was made to All State.

In the protest to our Office, Airport has questioned the Source Evaluation Board's (SEB) technical evaluation of All State's proposal on item 6--record of integrity and business ethics--and the award of a contract on different terms than those contained in the RFP.

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As to the technical evaluation, the record indicates that Airport's charges concerning item 6 were considered by the SEB and that, as a result of such consideration, three of the five SEB members reduced the point score for All State under item 6 by one point. Even with the reduction, All State remained the high scorer overall.

The record indicates that the points made by Airport were considered by the SEB as follows:

- "(a) The criminal violations of anti-trust, insurance, and automobile sales laws were misdemeanors in the State of Maryland. (Charges of taking money under false pretenses were dropped.)
- "(b) The guilty plea was entered only after extensive 'plea bargaining' and the issues were not tried on the merits.
- "(c) Airocar [under same ownership as All State] was fined \$10,000 instead of a possible \$3 million.
- "(d) The State of Maryland did not choose to void Airocar's contract.
- "(e) The sister corporations of Airocar - Red Top Cab Company, Arlington Yellow Cab Company, and Falls Church Yellow Cab Company - all enjoy good reputations, to the best of the SEB's knowledge.
- "(f) The proposed contract contains a provision prohibiting favoritism and the contract could be terminated for violation of the provision.
- "(g) All State, Air Transit and Airport Limo [all under the same ownership] presently have contracts with the FAA and are performing satisfactorily.
- "(h) The open taxicab system at Washington National is significantly different from an 'exclusive franchise' system and does not lend itself to schemes of the type utilized at BWI.
- "(i) The FAA's independent investigation did not reveal evidence of practices at Dulles similar to those at BWI."

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In resolving cases in which a protester challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. See Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37.

FAA has documented the considerations upon which the challenged evaluation is based. We have reviewed this record in light of Airport's allegations and see nothing in the record which indicates that the evaluation of All State's proposal with regard to item 6 was improper or that the SEB was arbitrary in evaluating All State's proposal as it did. To the contrary, it appears that the SEB rated All State's proposal on the basis of the reasoned judgment of its members and in accordance with the established evaluation criteria. The fact that Airport disagrees with that judgment does not invalidate it. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.


Airport's contention that the contract was awarded to All State on different terms than those contained in the RFP is based upon the fact that the contract contains a provision permitting vehicles belonging to Airport Limo, Inc., a limousine service owned by All State's principal owner and operating at National under a separate contract with FAA, without dispatchers, to be dispatched by taxicab dispatchers, which was not provided for in the RFP. Airport states that its original proposal contained certain questions regarding amendment 2, including an inquiry as to who would be doing the limousine dispatching, but that FAA did not respond. Airport submits that, had it been advised that limousine services would also be dispatched, there would have been a "substantial difference" in the amount of its offer and this is the "only substantial difference" between the Airport and All State proposals.

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Airport's contention that the questions in the initial proposal were never answered was first made in a letter of October 28, 1977. The date for best and final proposals was April 20, 1977. Airport's contention coming almost 6 months after it participated in best and final offers is untimely under the Bid Protest Procedures, 4 C.F.R. § 20.2 (1977), and will not be considered.

The question that remains, therefore, is whether there was anything in the RFP that precluded the successful offeror from dispatching limousines in addition to taxicabs. While the RFP was for managing and operating an "open taxicab transportation system" and the tenor of the RFP was the dispatching of taxicabs, there was no indication in the RFP that the contractor would not be able to also dispatch the limousines working out of the airport. Under the terms of the RFP, the contractor is required "to provide a sufficient number of dispatcher and other personnel * * * to meet the requirements of air travelers for prompt and efficient taxicab service." As long as the contractor can dispatch limousines without compromising the requirements of the RFP, we fail to see how the performance of the limousine dispatch service is in derogation of the RFP. Thus, while the RFP was not explicit that limousine dispatch services could be operated, we do not find that it was prohibited by silence. Therefore, we must treat Airport's failure to take the limousine dispatch service into account in the preparation of its proposal as due to its own oversight.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States